

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re S.W., a Person Coming Under the  
Juvenile Court Law.

SOLANO COUNTY HEALTH &  
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

A. D.-W.,

Defendant and Appellant.

A124549

(Solano County  
Super. Ct. No. J35337)

Appellant A. D.-W. (mother) appeals from an order filed on April 9, 2009,<sup>1</sup> in which the juvenile court terminated her parental rights<sup>2</sup> after finding it was likely her daughter S.W. would be adopted. (Welf. & Inst. Code, § 366.26.)<sup>3</sup> She argues the court erred in failing to apply the sibling relationship exception to prevent termination of her

<sup>1</sup> In the absence of prejudice, we deem mother's notice of appeal from an April 6, 2009 order to be a premature notice of appeal from a later court order, filed on April 9, 2009, which incorporated the earlier April 6, 2009, ruling. (Cal. Rules of Court, rule 8.100(a)(2).) We dismiss the appeal from the April 6, 2009, order as superseded by the appeal from the April 9, 2009 order.

<sup>2</sup> The juvenile court also terminated the parental rights of S.W.'s father, but he has not filed a notice of appeal.

<sup>3</sup> All further unspecified statutory references are to Welfare & Institutions Code.

rights and S.W.'s adoption. (§ 366.26, subd. (c)(1)(B)(v).) We reject this argument, and affirm.<sup>4</sup>

## FACTS

### A. *Background*

The history of this case is set out in our previous opinion. (*In re Ashley W.* (Aug. 13, 2007, A115589) [nonpub. opn.]) We recite only those background facts as are necessary to give context to the issue raised on this appeal.

In January of 2005, the juvenile court directed the Solano County Department of Health and Social Services (the Department) to detain five year old S.W. and her sister, seven year old A.W., because of physical abuse by their mother. The children were later adjudged to be dependents of the court and they were placed in the same foster care home. At the twelve-month review, father's parental rights were terminated, but mother was offered further reunification services. After the 18-month review, the juvenile court issued a series of orders directing the Department to create and implement a transition plan to effect the children's return to mother, and declined to set a hearing to determine whether mother's parental rights should be terminated pursuant to section 366.26. After an appeal by the Department and children, we concluded the Department had met its burden of demonstrating the children's return to their mother would create a substantial risk of detriment to their physical and emotional well-being. (*In re Ashley W.*, *supra*, at p. 21.) We also ruled the reunification period should not have been extended beyond the 18-month period. (*Ibid.*) Instead, the juvenile court should have terminated mother's reunification services and set a section 366.26 hearing to determine permanent plans for the children. (*Ibid.*) On August 21, 2007, pursuant to our order, the juvenile court set aside its previous orders extending reunification services to mother and set a section 366.26 hearing.

---

<sup>4</sup> Mother also appeals from orders filed on January 6, 2009, February 26, 2009, and March 4, 2009, and a separate order filed on April 6, 2009, in which the court denied mother's petition for relief under section 388. Because no issues are raised regarding those orders, we deem the appeals abandoned.

***B. Section 366.26 Proceeding***

After several hearings, the juvenile court finally adjudicated S.W.'s permanent plan at a hearing held on April 6, 2009. At the time of the hearing, S.W. was 9 years old, and A.W. was 11 years old. They had lived in the same foster care home from September 2005 through July 2008, and thereafter in separate foster care homes for seven months before the hearing. During the time the children lived in the same foster home, S.W.'s behavior and emotional health dramatically improved, but despite the provision of services, A.W. was having difficulty managing her behavior and anger. By July 2008, the Department social worker, together with the children's service providers, and their counsel, decided the children could no longer remain in placement together. The children's foster parents were no longer able to help A.W., and they were not willing to adopt her because of her behavior and mental health issues. On July 21, 2008, A.W. was moved to another placement. She was placed in a new foster home with a caretaker who had the skills, experience, and ability to handle the child's special needs. At her new foster home, A.W. improved with medication and she attended therapy twice a week. The Department social worker reported both children were sad they were no longer living together. But, the children kept in contact through telephone calls and had visits facilitated by the Department and the children's foster parents. In December 2008, S.W.'s foster parents signed a post-adoption contact agreement to ensure continued sibling contact in the event they adopted S.W.

The Department social worker assessed S.W. as likely to be adopted because of her age, her developmental and medical needs were being met, she had the ability to bond and attach to parental figures, and her foster parents wanted to adopt her. S.W. was attached to her foster parents, she wanted to be adopted by them, and her placement was stable.

At the April 6, 2009, hearing, the Department's social worker testified regarding her observations of S.W. and her foster parents. S.W. called her foster parents "mom" and "dad"; and the child had chosen to use their last name at school. They were loving towards each other, there appeared to be a strong attachment, and it was a very positive

relationship. S.W. was fully integrated into her extended foster family. During conversations with the Department social worker over the preceding year and a half, S.W. consistently stated she wanted to be adopted by her foster parents. She knew adoption meant she would no longer have any contact with her biological mother, and she would live with her foster parents who would become her mom and dad.

The Department social worker stated the foster parents allowed S.W. to visit A.W. twice a month and the children had weekly phone calls. The social worker did not know of any problems regarding the visits that were then being arranged between the children's foster parents. S.W.'s foster parents still cared about and loved A.W., but they could not meet her needs. At the time of the hearing, there was no indication S.W.'s foster parents would be willing to have A.W. returned to their home.

The Department social worker was questioned about the post-adoption contact agreement that had been executed between S.W.'s foster parents and the children's counsel in December of 2008. The agreement provided the children would have a minimum of once-a-month visitation as well as contact through telephone calls and letters. The social worker had discussed with the children the type of contact they would have with each other if S.W. was adopted, and both children were comfortable with "those arrangements." The social worker had no reason to believe S.W.'s foster parents would not facilitate S.W.'s continued contact with A.W. The social worker noted the Department would have the ability to control and facilitate sibling visits until the adoption was finalized. S.W., an articulate child, expressed her desire to maintain contact with her sister, and her foster parents were supportive of her desire to maintain contact with A.W. The social worker had no concerns S.W.'s foster parents would act adversely to S.W.'s desire to have continued contact with her sister. Mother testified the children had a close relationship and they supported each other.

After considering argument from counsel, the court found by clear and convincing evidence that S.W. would probably be adopted within a reasonable time. The court noted S.W. had been in her foster home for over three and a half years, and her foster parents loved her and wanted to adopt her. The court also noted it was mandated to terminate

parental rights unless the “sibling relationship” exception precluded adoption as S.W.’s permanent plan. The court found the sisters’ relationship was undoubtedly of great benefit to them; it was a “quality” relationship. The court would be “troubled . . . were it not for the following factors.” “There is a post-adoption agreement. The foster parents get along and implement not only that agreement but visits in excess of that agreement. Mother’s argument that basically, life gets in the way of things, there could be a move out of state, and we don’t know what the future holds. But it might not hold continuing contact between these two minors. I . . . think that is a concern. But the risk of what might happen in the future is not a sufficient risk to overcome the benefit, which I think far outweighs that of giving this child a permanent home.” The court terminated parental rights and freed S.W. for adoption after finding the benefit of allowing her to be adopted far outweighed the benefits of not doing so and maintaining biological family ties. As part of its order, the court directed sibling visits twice a month and frequent telephone calls, and granted the Department social worker discretion to expand or restrict but not eliminate visits. The court inquired whether its order was in conflict with the post-adoption contact agreement. The children’s counsel stated it was his understanding the court’s order would continue as long as S.W. was a court dependent and then the post-adoption contact agreement would be the minimum requirement.

### **DISCUSSION**

“At a section 366.26 hearing, once the Department has shown it is likely the child will be adopted, the burden shifts to the parents to prove that termination of parental rights would be detrimental to the child based on one of the exceptions enumerated in subdivision (c)(1)[(B)]. [Citations.]” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 401). Subdivision (c)(1)(B)(v) of section 366.26, provides an exception to termination of parental rights when termination would cause a substantial interference with a child’s sibling relationship. The parents’ burden to prevent termination of their rights and adoption is substantial. (*In re Celine R.* (2003) 31 Cal.4th 45, 61.) They must establish, to the juvenile court’s satisfaction, “a compelling reason for determining that termination would be detriment to the child due to . . . [¶] . . . substantial interference with a child’s

sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).) Thus, “even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61.)

Mother challenges the juvenile court’s rulings that S.W.’s adoption would not substantially interfere with the sibling relationship, and the benefit of adoption outweighed the benefit of ongoing sibling contact. Reviewing the rulings for an abuse of discretion (cf. *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1342 (*Jasmine D.*)),<sup>5</sup> we conclude the juvenile court did not err in terminating mother’s parental rights and establishing S.W.’s permanent plan as adoption.

Evidence of a prospective adoptive family’s willingness to allow post-adoption sibling contact is relevant to whether termination of parental rights would be detrimental to the child due to a substantial interference with a sibling relationship. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 254.) We reject mother’s contention that the juvenile court

---

<sup>5</sup> Mother argues we should review the juvenile court’s determination under the substantial evidence test. We agree with the Department the proper standard of review is abuse of discretion. In *Jasmine D.*, *supra*, 78 Cal.App.4th at page 1351, we determined “[t]he practical differences between the two standards of review are not significant. . . . However, the abuse of discretion standard . . . seems a better fit in cases like this one, especially since the statute . . . requires the juvenile court to find a ‘compelling reason for determining that termination would be detrimental to the child.’ [Citation.] That is a quintessentially discretionary determination.” (*Id.* at p. 1351.) Although *Jasmine D.* concerned the ongoing parental relationship exception (*id.* at pages 1342-1343), we hold the same standard of review should apply when considering the sibling relationship exception. In both circumstances, the juvenile court is required to find a “compelling reason” to apply the exception. (§ 366.26, subd. (c)(1)(B)(i),(v).)

improperly relied on the execution of a post-adoption contact agreement, and the social worker's testimony that S.W.'s foster parents were willing to facilitate contact with A.W. if they adopted S.W. While the juvenile court discussed the evidence demonstrating the likelihood of post-adoption contact between the children, it appropriately expressed concern that future events could possibly result in the contact being discontinued after an adoption. However, the juvenile court did not find the evidence essential to its ruling to terminate parental rights. The basis for the termination of parental rights was the juvenile court's finding that "the benefit of legal permanence through adoption" (§ 366.26, subd. (c)(1)(B)(v)), far outweighed any loss S.W. might suffer if her relationship with A.W. did not continue after an adoption. (See *In re Megan S.*, *supra*, 104 Cal.App.4th at p. 254.)

A "child has a compelling right 'to [have] a placement that is stable, permanent, and that allows a caretaker to make a full emotional commitment to the child.' [Citation.] Adoption is the Legislature's first choice because it gives the child the best chance at such a commitment from a responsible caretaker. [Citations.]" (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.) At the time of the April 6, 2009 hearing, S.W. was 9 years old. She had lived with her foster parents for more than three and a half years, bonded with them, called them "mom" and "dad," chosen to use their last name in school, and wanted to be adopted by them. Although the fact is not determinative on the question of termination of parental rights and freeing of S.W. for adoption, S.W.'s foster parents were committed to maintaining contact with A.W. even after S.W.'s adoption. Under these circumstances, the court reasonably concluded that despite any risk to S.W.'s emotional well-being if she lost contact with A.W., it was in S.W.'s best interest to terminate parental rights so she would have an opportunity to secure a permanent adoptive home, instead of "leav[ing] the child in a tenuous guardianship or foster home placement." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951.) Because mother did not meet her burden of presenting evidence supporting a compelling reason for application of the sibling relationship exception (§ 366.26, subd. (c)(1)(B)(v)), we see no reason to disturb the juvenile court's decision terminating parental rights and freeing S.W. for adoption.

## **DISPOSITION**

The order filed April 9, 2009 is affirmed. The appeals from the orders filed on January 6, 2009, February 26, 2009, March 4, 2009, and the two orders filed on April 6, 2009, are dismissed.

---

McGuiness, P.J.

We concur:

---

Pollak, J.

---

Siggins, J.